

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 31, 1997 Hearing Room 357

3:15 PM Tapes 68 - 69

MEMBERS PRESENT:

Rep. John Minnis, Chair

Rep. Jo Ann Bowman, Vice-Chair

Rep. Peter Courtney

Rep. Floyd Prozanski

Rep. Lane Shetterly

Rep. Larry Wells

MEMBER EXCUSED: Rep. Ron Sunseri

STAFF PRESENT:

Scott Lumsden, Counsel

Brian Higgins, Administrative Support

MEASURE/ISSUES HEARD:

Work Session - HB 2918, HB 2431, HB 2240

Public Hearing - HB 3079, HB 3341, HB 2834, HB 2242

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

Tape/#	Speaker	Comments
TAPE 68, A		
004	Chair Minnis	Calls subcommittee to order at 3:23 PM >Rep. Sunseri is excused.
HB 2918 -		

<u>WORK SESSION</u>		
006	Chair Minnis	Opens work session on HB 2918
008	Scott Lumsden	Committee Counsel >reads provisions of bill, -1 amendments, (EXHIBIT A) , and -2 amendments, (EXHIBIT B)
025	Rep. Bowman	MOTION: Moves to ADOPT HB 2918-1 amendments dated 03/25/97.
028	Rep. Shetterly	This is a horrible statute. >Explains difficulties he has with Sections 3 and 5 and conditions of expungement
047	Lumsden	Section 5 lists crimes to which expungement applies; Section 6 exempts certain crimes from that list of which one is under capital B.
058	Rep. Shetterly	Maybe someday we can rewrite this entire statute because I know we have another bill coming down on this as well. >Line 45 of page 2 has the exception of the right to expunge. >The narrow exception we're creating on lines 8-10 is if the criminal episodes were all misdemeanors, then expungement can occur.
070	Lumsden	Section 5 allows for Class C felonies, etc.
071	Rep. Shetterly	I do not want to carry this bill.
072	Rep. Wells	HB 2240, of which we are also working on, has a big amendment involved with a big "however" in it; perhaps these two bills could be merged.
080	Rep. Shetterly	I am not objecting to the bill nor the exception it makes, but I do realize how awfully confusing this statute is at it exists.
086	Chair Minnis	How long would it take to have this completely redrafted?
089	Rep. Shetterly	The whole statute?
093	Chair Minnis	Rep. Wells suggests merging the two which could confuse or clarify.
		>Let's ask LC to merge the two and rewrite the entire statute.
102	Rep. Shetterly	I think it would help practitioners.
104	Chair Minnis	Closes work session on HB 2918 >We will carry HB 2240 over with the intent to merge the two and rewrite

		the statute.
<u>HB 2431 - WORK SESSION</u>		
116	Chair Minnis	Opens work session on HB 2431
118	Scott Lumsden	Committee Counsel >reads provisions of bill and -1 amendments, (EXHIBIT C)
133	Fred Avera	President, District Attorney's Association >spoke with Department of Transportation (ODOT) to come up with -1 amendments >Kelly Taylor from ODOT has some suggestions to the -1 amendments.
145	Chair Minnis	Let's go over the suggested clarifications in the -1 amendments.
146	Fred Avera	Suggested amendments: >Page 2, line 3 - addresses those who want a stay which the court decides on after a request is made. >Page 2, line 13 - "reimpose" is used instead of "reinstate" >Page 2, lines 15,17 - The suggestion is to insert the phrase "right to apply for a commercial driver's license" as this is used elsewhere.
181	Rep. Bowman	Can you suspend a right to apply?
182	Fred Avera	Yes, you can. >ORS 809.410, referenced on line 16, has been amended previously making Sections 32 and 33 apply to this statute. >SB 148, which is on the Governor's desk, makes some amendments to 809.410 adding new sections of 34 and 35.
202	Chair Minnis	We can draft some additional language to address SB 148 assuming it is signed.
205	Avera	The sum of the amendments is this: If your license is suspended as a result of a conviction and you wish to pursue a criminal appeal and want a stay during the appeal, one would need to file a motion to stay with the court.
212	Chair Minnis	Suggests Avera work with counsel and Legislative Counsel

		>sets work session over until we can get hand-engrossed language that will work for us
<u>HB 3079 - PUBLIC HEARING</u>		
231	Chair Minnis	Opens public hearing on HB 3079
238	Jim Arneson	Oregon Criminal Defense Lawyers Association >opposed to the measure because it revokes driving privileges for a lifetime, suggesting that a person could never reform
257	Rep. Courtney	[Inaudible question]
264	Arneson	Responds that he was not under the impression that it was a second look and, if it is, it should be drafted a bit differently
276	Rep. Courtney	Asks for clarification of second look provision
280	Arneson	If such a drastic suspension is imposed for this period of time, we would ask for a second look provision to allow a reformed person to obtain a driver's license.
297	Kelly Taylor	Oregon Department of Transportation >submits and reads written testimony, (EXHIBIT D)
342	Rep. Courtney	In 1993, legislation was passed to allow licenses to be returned after a certain period of time of incarceration.
375	Rep. Minnis	Asks for feedback from the committee >would like comprehensive proposals on DUII measures
387	Rep. Prozanski	I'd be glad to get some of the historical perspective.
394	Rep. Wells	What happened to the bill that takes it from Class A misdemeanor to a Class C felony? I kind of liked that one.
402	Chair Minnis	I'm torn between the time it takes in the committee to hear all of these bills or to assign a task force to address some concepts. >appoints Rep. Prozanski, Rep. Courtney, and Rep. Sunseri to the Task Force to look at the DUII bills >closes public hearing on HB 3079
<u>HB 3341 -</u>		

<u>PUBLIC HEARING</u>		
428	Chair Minnis	Opens public hearing on HB 3341 >appoints Rep. Bowman to run the hearing until he returns
<u>TAPE 69, A</u>		
004	Jim Arneson	Oregon Criminal Defense Lawyers Association >in opposition to HB 3341 as it removes methamphetamines from the federal schedule and moves it to a schedule 1 controlled substance >On page 2 of the bill, it adopts the crime of being under the influence of methamphetamine. >It's a bad idea to single out methamphetamine from the schedule. >"Under the influence" here is different than with DUII. >There is a difficulty of being able to prove "under the influence" here.
063	Bowman	Closes public hearing on HB 3341
<u>HB 2834 - PUBLIC HEARING</u>		
064	Vice Chair Bowman	Opens public hearing on HB 2834
068	Nancy Miller	Citizen Review Board Administrator, Legislative Liaison, State Court Administrator's Office on Juvenile Issues >mentions fiscal statement for the bill >bill changes the waiver law for all Class C felonies, or 120 crimes >potential for impact on Indigent Services Account
106	Rep. Wells	Does this go back to Measure 11 where we were remanding juveniles to adult courts?
109	Miller	No, this bill speaks to discretionary waiver and Measure 11 is automatic waiver.
115	Rep. Prozanski	The reality is that this will take a group, not under Measure 11, that would then be able to be waived into the adult group.

120	Miller	Responds that it wouldn't be an automatic waiver
125	Rep. Wells	What does waiver mean in relation to remand? >I understood this to mean that they were forced to be moved into adult court.
130	Miller	Responds that juvenile code was amended to read waiver instead of remand
143	Rep. Shetterly	So, the old remand is the functional equivalent of the new waiver.
145	Miller	That's correct.
153	Larry Oglesby	Legislative Chair, Oregon Juvenile Department Director's Association >submits and reads written testimony, (EXHIBIT E)
194	Vice Chair Bowman	Comments that there appears to be a discrepancy between 15 years old and 16 years old >Is it your intention that 15 year olds be included in this bill?
198	Oglesby	Responds that it would be 15 or over
204	Vice Chair Bowman	I don't see anything in the bill that addresses the issues you mentioned in your testimony. This bill gives a lot of leeway to the person charging the youth.
214	Oglesby	Subsections 3 and 4 lay out the criteria, which is existing law.
232	Rep. Prozanski	Because of resource limitations, what is your opinion on this becoming an out for juvenile courts to move problems to another setting?
238	Oglesby	I don't envision that being the case. It is not our intent that this become a way to dump cases into the adult court system.
255	Vice Chair Bowman	Would we be treating youth offenders more harshly than adult offenders if someone stole an automobile as a youth and we sent them through the adult system?
259	Oglesby	Responds that he is not familiar enough with the adult system on these types of cases
268	Jim Arneson	Oregon Criminal Defense Lawyers Association >in opposition to bill >Current law is aimed at children who are at risk to others when we talk about Class C felony. >It is important to maintain that children under 18 are treated differently and to keep this distinction unless it is a Measure 11 case.
309	Rep. Wells	Asks for clarification of 1993 law about waivers being allowed for any misdemeanor offense involving theft
		Responds that he doesn't know but does remember a bill last session from

323	Arneson	Rep. Prozanski that would allow municipal courts to deal with some juvenile cases
330	Rep. Wells	It's ORS 419c.370.
335	Arneson	Ingrid is more familiar with juvenile stuff than I am.
339	Rep. Prozanski	I think it is identical, looking at the letter, to my bill from the 1995 legislature.
346	Rep. Shetterly	That statute does just apply to a waiver of these cases to municipal courts and not to circuit courts for prosecution as felonies.
361	Rep. Wells	Evidently this statute doesn't have any relation then to the issue we are discussing here as far as the small segment of Class C felonies.
374	Arneson	My understanding of 419c.370 is that it affects a small number of the juvenile population.
380	Rep. Shetterly	There is a provision for prosecutions waived under that statute that the municipal court may impose any sanction authorized for the offense except for incarceration so it is real limited as to how the municipal courts can impose sentences.
392	Chair Minnis	Closes public hearing on HB 2834
<u>HB 2242 - PUBLIC HEARING</u>		
393	Chair Minnis	Opens public hearing on HB 2242
400	John Bridges	Chair, Oregon State Bar New Lawyers Division >submits and summarizes written testimony, (EXHIBIT F)
450		Continues testimony
TAPE 68, B		
014	Bridges	Continues testimony
047	Rep. Bowman	Asks for clarification of language at bottom of page 1 from line 22 down
052	Bridges	Paragraph 3 addresses a specific incident from Lincoln County we would not like to see again >The first sentence allows a county to decide if they want to do the expunction by blanket agreement.

		>In one of the counties, one of the judges discontinued the blanket agreements after the program was under way.
080	Tony Corcoran	State Representative, District 44 >interested in bill due to success of peer court in Cottage Grove >in support of -3 amendments
090	Chair Minnis	Do you have any experience with these peer courts?
091	Rep. Corcoran	Responds that he has had contact with Cottage Grove officials whom actively support the program
114	Walter McAllister	Oregon Department of Transportation, Youth Program Manager >submits and reads written testimony, (EXHIBIT G)
138	Jim Arneson	Oregon Criminal Defense Lawyers Association >in support of bill
146	Chair Minnis	Asks for clarification of remand statutes, Measure 11, etc. to see if this is a different group of kids
154	Arneson	Responds that these are kids who would neither be waived nor subject to Measure 11
158	Chair Minnis	So, these are the individuals left in the juvenile court.
162	Rep. Shetterly	I understand this to mean those juveniles eligible to enter into a formal accountability agreement.
168	Chair Minnis	Asks for clarification on delaying of adjudication proceedings so as to allow for entering into accountability agreements
180	John Bridges	When the wholesale revision of the juvenile code was done, what disappeared was the informal accountability agreements which were replaced by formal ones.
198	Chair Minnis	So, if I understand this correctly, it was the 1995 session that did away with the informal agreements and established formal ones. >This would, then, allow for informal agreements.
203	Bridges	It will to the extent that there is still a record of the agreement. >Section 2 deals with the program director being able to execute the agreement. >I don't think they will be called "formal accountability agreements." >We still want to have police officers issuing citations.
233	Rep. Wells	I was hoping to get more background on the bill and the pilot program.

237	Bridges	<p>There are 13 programs in operation around the state.</p> <ul style="list-style-type: none"> >They operate on city-wide and county-wide levels. >A program has been in existence in Bend for 11 years. >The program has been successful on the national level. >Programs need local monies to exist. >In Baker County, the DA's office coordinates the program.
282	Rep. Wells	Does this have a sunset?
283	Bridges	Yes. I believe it is 2001, but it is my goal that we will be back at that time to find ways to continue to fund this.
301	Roxie Cuellar	<p>City of Cottage Grove Peer Court Coordinator, Department of Police</p> <ul style="list-style-type: none"> >submits and summarizes written testimony, (EXHIBIT H)
329	Chair Minnis	Tell me how this process works.
331	Cuellar	Responds that most of the programs start with citations issued by police officers
333	Chair Minnis	What type of citation?
335	Cuellar	A regular citation with instructions to contact the peer court within 72 hours.
339	Chair Minnis	What happens if they don't?
340	Cuellar	If there is no response then the case is referred to the juvenile department.
345	Chair Minnis	Then what happens?
347	Cuellar	If it goes to the juvenile department it is handled normally. Some types of offenses would go to municipal court.
355	Chair Minnis	<p>Is that one of those DA discretion things?</p> <ul style="list-style-type: none"> >What type of authority do you operate under?
360	Cuellar	To a certain extent, it is just the fact that nobody argues about it, but we do have a formal agreement with the juvenile department describing what types of cases we can take.
372	Chair Minnis	Asks for examples of C felonies that they might deal with
373	Cuellar	For first time offenders kids were having more serious consequences for tobacco offenses than for some Class C felonies.

389	Rep. Prozanski	It appears to be officers' discretion as to whether or not to divert them to the peer court or not.
393	Cuellar	There is a great deal of discretion among the officers.
402	Chair Minnis	What other types of Class C felonies do you deal with?
402	Cuellar	Theft one, arson two.
409	Chair Minnis	Any sex offenses?
409	Cuellar	No.
410	Chair Minnis	With the UUMV, are those the drivers or passengers?
411	Cuellar	Responds that in this case it was the driver.
412	Chair Minnis	So these are the ones running around stealing cars all over the place.
413	Cuellar	Yes, and he would have gotten a letter from juvenile recommending he attend a six-hour theft course and that would have been it, so the parent contacted me and I contacted Youth Services.
422	Chair Minnis	So, the current juvenile system is not dealing with this.
423	Cuellar	They don't have the resources. >If no violence is involved in a Class C felony, the consequences may be greater in peer court than in juvenile system.
432	Rep. Prozanski	That was another bill we passed in 1995.
437	Chair Minnis	I don't have a problem with misdemeanors but I do have a problem with UUMV. > Closes public hearing on HB 2242
TAPE 69, B		
HB 3341 - PUBLIC HEARING		
013	Chair Minnis	Opens public hearing on HB 3341
016	Ben Westlund	State Representative, District 55 >It upgrades by one classification to the next higher class and creates for being under the influence a Class B felony.

033	Chair Minnis	I guess the other testimony we had was from Jim Arneson.
035	Rep. Westlund	One of the primary motivating factors is that Central Oregon, especially Highway 97, is becoming a pathway for distribution of this substance. It is also critical to send a message to youth about this drug.
044	Chair Minnis	Closes public hearing on HB 3341
<u>HB 2431 - WORK SESSION</u>		
047	Chair Minnis	Opens work session on HB 2431
058	Kelly Taylor	Oregon Department of Transportation >Comments on changes made to the amendments in coordination with Fred Avera, Scott Lumsden and Legislative Counsel, (EXHIBIT I)
078	Chair Minnis	So we incorporated SB 128.
080	Rep. Shetterly	MOTION: Moves to ADOPT HB 2341-1 amendments dated 03/26/97 and that the measure be FURTHER AMENDED on page 2, lines 3-4, by changing "notifies the court, in writing, that the person is requesting rescission of" to "requests in writing that the court direct the department to rescind" and on page 2, line 13, by changing "reinstate" to "reimpose" and on page 2, line 15 after "license" by inserting "or right to apply for a commercial driver license" and on page 2, line 16 by deleting "(18) or (19)" and on page 2, line 17, after "license" by inserting "a right to apply for a commercial driver license."
084		VOTE: 5-0-2 EXCUSED: 2 - Courtney, Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
087	Rep. Shetterly	MOTION: Moves HB 2431 to the full committee with a DO PASS AS AMENDED recommendation.
089		VOTE: 5-0-2 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Courtney, Sunseri
	Chair	The motion CARRIES.

	Minnis	REP. BOWMAN will lead discussion on the floor.
092	Chair Minnis	Closes work session on HB 3341 >Declares subcommittee adjourned at 4:54 PM

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2918, Proposed amendments (-1 dated 3/25/97), Staff, 1p.

B - HB 2918, Proposed amendments (-2 dated 3/25/97), Staff, 1 p.

C - HB 2431, Proposed amendments (-1 dated 3/26/97), Staff 2 pp.

D - HB 3079, Written testimony, Kelly Taylor, Department of Transportation, 1 p.

E - HB 2834, Written testimony, Larry Oglesby, Oregon Juvenile Department Directors Association, 3 pp.

F - HB 2242, Written testimony, John Bridges, Oregon New Lawyers, 1 p.

G - HB 2242, Written testimony, Walter McAllister, Department of Transportation, 1 p.

H - HB 2242, Written testimony, Roxie Cuellar, City of Cottage Grove, 1 p.

I - HB 2431, Consensus amendments to -1 amendments, Staff, 2 pp.